

REMARKS

In this reply, Applicant presents currently pending claims 1-23 without amendment for reconsideration and withdraws claims 24-26. Favorable reconsideration and allowance is requested, particularly in view of the responsive arguments that follow.

1. Response to Restriction Requirement

In the telephone conversation between Timothy E. Newholm and the Examiner on November 8, 2006, the Examiner restricted the claims of the above-identified application to one of the following groups pursuant to 35 U.S.C. § 121, including:

- I. Claims 1-23, drawn to a method of detecting a bio-emergency, classified in class 705, subclass 2.
- II. Claims 24-26, drawn to a method of compiling medical information, classified in class 705, subclass 3.

In response to the Restriction Requirement, applicant elects the claims of Group I, claims 1-23, *with* traverse. This election is made without prejudice and Applicant reserves the right to present non-elected claims 21-24 in a divisional or continuation of the above-identified application.

If there would be a serious burden on the Examiner if a restriction is not required, Applicant should be required to restrict the claims presented to one of such independent inventions. MPEP §806.06. Elements of Group I recited in claims 24-26 are also recited in claims of Group II. Applicant therefore asserts that the examination of the three claims of Group II would place little if any additional burden on the Examiner. The Restriction therefore is improper.

“If the examination of all the claims in an application can be without serious burden, the Examiner must examine them on the merits even though they include claims to independent or distinction inventions.”

MPEP §803.

In light of the foregoing, examination of Groups I-II, claims 1-26, is believed to be in order and is respectfully requested.

2. IDS

Missing prior art reference PCT/WO/02/25551 A1, cited on Form PTO-1449 submitted August 27, 2003, is attached herewith.

3. Objection to the Specification

The Examiner objects to the specification as not providing proper antecedent basis for the claimed subject matter, namely, “categorizing the symptom information” of claim 17. In response, Applicant asserts that the specification *does* provide the proper antecedent basis for the claim language. For instance, p. 13, ll. 5-7 of the specification states “the data collected at the triage units of the health care facilities 16 may be translated into a code associated with a number of categories of compliance, as partially shown immediately below in Table 1.” Table 1 presents a partial list of symptom information grouped into a number of categories. Therefore, the specification supports that triage information includes symptom information that is categorized, i.e., translated into a code associated with a number of categories.

4. Rejections Based on the Prior Art

a. Rejections Under § 102(e)

The Examiner has rejected all of the pending claims as either being anticipated by Epler et al., U.S. Patent Application No. 2003/0187615 (the “Epler application”). In order to overcome the Examiner’s rejection, applicant files herewith the Declaration of Dr. Edward N. Barthell, the inventor of the above-identified application, under 37 CFR § 1.131. In the Declaration, Dr. Barthell declares conception of the method for detecting a bio-emergency described and claimed in the above-identified application prior to the effective filing date of March 26, 2002 of the Epler application. Barthell Declaration, Paragraph 3. In support of his Declaration, Dr. Barthell provided a true and correct copy of an article, co-authored by Dr. Barthell, published in April 2002 but showing a “received for publication” date of December 18, 2001 for the underlying paper, prior to the March 26, 2002 filing date of the Epler application. Barthell Declaration, Paragraph 7. The article discloses aspects set forth in the pending claims such as a) receiving triage patient health data, recording the data, transmitting at least a portion of the data to a regional repository, analyzing the data and communicating information based on the analysis of that and other data, that were conceived prior to the filing date of the Epler application. Barthell Declaration, Paragraph 8. Further, Dr. Barthell has declared that during the time period after his initial conception of the invention, up to the filing date of provisional patent application 60/418,014, of which the above-identified patent application claims priority from, he worked diligently in developing the invention. Barthell Declaration, Paragraph 9.

In view of the foregoing, it is believed that Applicant has established invention of the subject matter of the claims in the pending application prior to the effective filing date of the Epler application. As such, it is believed that the Epler patent application is not prior art to the present application and withdrawal of the Examiner's rejections to the pending claims under 35 U.S.C. § 102(e) is respectfully requested.

CONCLUSION

The *Amendment* filed on March 15, 2007 was found to be non-compliant. Applicant has corrected the non-compliant portion of the amendment by submitting Exhibits A-B attached to the Affidavit under 37 CFR 1.131.

No fees are believed payable with this communication. Nevertheless, should the Examiner consider any fees to be payable in conjunction with this or any future communication, the Director is authorized to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,



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